



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
http://www.epa.gov/region08

DOCKET NO.: RCRA-08-2003-0002

IN THE MATTER OF:
OMG AMERICAS, INC.
APEX OPERATIONS
P. O. Box 2407
Mile 15, Highway 91 West
Opal, Wyoming 83124,
EPA ID No. UTD982589848
Respondent
FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the
CONSENT AGREEMENT resolving this matter is hereby approved and incorporated by
reference into this Final Order. The Respondent is hereby ORDERED to comply with all of the
terms of the CONSENT AGREEMENT, effective immediately upon receipt by Respondent of
this CONSENT AGREEMENT and Final Order.

April 23, 2003
DATE

SIGNED
Alfred C. Smith
Regional Judicial Officer

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII**

IN THE MATTER OF:)	Docket No. RCRA-08-2003-002
)	
OMG Americas, Inc. - Apex Operations)	
P.O. Box 2407)	
Mile 15, Highway 91 West)	
St. George, UT 84771)	
)	
EPA ID No. UTD982589848)	
)	
Respondent.)	

CONSENT AGREEMENT

The United States Environmental Protection Agency, Region VIII, and OMG Americas, Inc. - Apex Operations (hereafter referred to collectively as “the parties”), by their undersigned representatives, hereby consent and agree as follows:

AUTHORITY

1. This matter is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits set forth at 40 C.F.R. Part 22.

2. This is a civil administrative action instituted pursuant to Section 3008(a) of the Solid Waste Disposal Act, as amended by and hereafter referred to as the Resource Conservation and Recovery Act and subsequent amendments ("RCRA"), 42 U.S.C. § 6928(a). RCRA § 3008(a), 42 U.S.C. § 6928(a), authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to issue complaints and compliance orders whenever the

Administrator determines that any person has violated or is in violation of any requirement of RCRA Subtitle C, 42 U.S.C. §§ 6901-6991.

3. EPA and the Respondent have agreed to settlement of this matter before the filing of a complaint as authorized by 40 C.F.R. § 22.13(b), and to execute this Consent Agreement pursuant to 40 C.F.R. § 22.18(b)(2) and (3) to simultaneously commence and conclude this matter upon issuance of a final order.

BACKGROUND

4. This Consent Agreement contains all terms of the settlement agreed to by the parties. Upon incorporation into a final order, this Consent Agreement applies to and is binding upon EPA and Respondent, its officers, directors, employees, agents and all persons acting under or for Respondent, until such time as the civil penalty required under paragraph no. 63 has been paid and the work referenced in paragraph no. 65 has been fully performed. This Consent Agreement upon incorporation into a final order shall constitute full civil settlement of the violations alleged herein. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondent's responsibilities under this agreement.

5. Respondent admits the jurisdictional allegations contained herein.

6. Respondent neither admits nor denies the specific factual allegations contained herein.

7. Respondent waives its right to a hearing on any issue of law or fact set forth in this Consent Agreement under Section 3008(b) of RCRA, 42 U.S.C. § 6928(b).

8. Prior to executing this Consent Agreement, Respondent demonstrated to EPA compliance with the relevant provisions of RCRA.

9. Pursuant to Sections 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the seriousness of the violations, Respondent's good-faith efforts to comply, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of one hundred eleven thousand dollars (\$111,000.00).

GENERAL ALLEGATIONS

The following general allegations apply to and are incorporated by reference in each of the counts set forth in this Consent Agreement:

10. Respondent, OMG Americas, Inc., is a corporation organized under the laws of the State of Ohio doing business within the exterior boundaries of the Shivwits Band of Paiute Indian Reservation, located in the State of Utah.

11. Respondent is a "person" as defined in RCRA § 1004(15), 42 U.S.C. § 6903(15).

12. At times relevant herein, Respondent owned and/or operated the Apex Operations facility ("facility") which recycled cobalt feed material and tungsten carbide scrap. The Apex Operation subsequently ceased operating in December 2002.

13. At times relevant herein, the facility was a "facility" as defined at 40 C.F.R. § 260.10.

14. At times relevant herein, Respondent was an "owner" and "operator" of the facility as defined at 40 C.F.R. § 260.10.

15. The facility is located on approximately 180 acres of tribal trust land on the Shivwits Band of Paiute Indian Reservation leased by the Respondent from the Shivwits Band of Paiute Indian Tribe.

16. At times relevant herein, Respondent generated and stored wastes at the facility which are “solid wastes” as defined by RCRA § 1004(27), 42 U.S.C. § 6903(27), and 40 C.F.R. § 261.2.

17. At times relevant herein, Respondent generated and stored wastes at the facility which are “hazardous wastes” as defined by RCRA § 1004(5), 42 U.S.C. § 6903(5), and 40 C.F.R. part 261.

18. Respondent is a “generator” within the meaning of 40 C.F.R. § 260.10 subject to the generator regulations set forth at 40 C.F.R. Part 262.

19. Respondent filed a Subsequent Notification of Hazardous Waste Activity on May 25, 1999, with the Utah Division of Solid and Hazardous Wastes identifying the facility as a small quantity generator (“SQG”) of the following hazardous wastes: chromium (D007); solvents (F005); ignitable wastes (D001); and benzene (D018).

20. According to Respondent’s RCRA Subtitle C Identification Form for 2001, the Respondent is a large quantity generator (“LQG”) of hazardous waste.

21. A generator who generates between 100 kilograms and 1,000 kilograms of hazardous waste in a calendar month is a SQG of hazardous waste subject to the regulations set forth at 40 C.F.R. Part 262, including the regulations regarding accumulation time set forth at 40 C.F.R. § 262.34(d).

22. A generator who generates greater than 1,000 kilograms of hazardous waste in a calendar month is a LQG of hazardous waste subject to the regulations set forth at 40 C.F.R. Part 262, including the regulations regarding accumulation time set forth at 40 C.F.R. § 262.34(e).

23. Between September 16 through 17, 2002, EPA conducted a RCRA Compliance Evaluation Inspection (the "Inspection") at the facility and investigated the condition of Ponds 2 and 4 due to a recent high chromium discharge. The Inspection included a physical inspection of the facility including Ponds 2 and 4, records review, and interview of facility personnel.

Count 1
(Illegal disposal of hazardous waste)

24. Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), prohibits the treatment, storage, or disposal of any hazardous waste, except in accordance with an EPA or State issued permit.

25. 40 C.F.R. § 270.1(c) states, in part, that RCRA requires a permit for the treatment, storage, and disposal of any hazardous waste as identified or listed in 40 C.F.R. Part 261.

26. 40 C.F.R. § 260.10 defines disposal, in relevant part, as the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid or hazardous waste into or onto the land.

27. Respondent does not have, and never has had, a permit from either EPA or the State of Utah for the treatment, storage, or disposal of hazardous waste at the facility.

28. For four days during the period August 10 through 15, 2002, Respondent discharged approximately 44,000 gallons of cobalt plant wastewater containing chromium levels of 56 parts per million ("ppm") above the RCRA regulatory limit of 5 ppm into Pond 2. Upon

discovery of this apparent discharge by Respondent, Respondent voluntarily reported it to EPA and halted further process operations.

29. Wastewater from Pond 2 was pumped into Pond 4 between August 10 and 15, 2002, transferring the high chromium wastewater to Pond 4 during the four day exceedance period.

30. The high chromium wastewater discharged into Ponds 2 and 4 is a hazardous waste within the meaning of RCRA § 1004(5), 42 U.S.C. § 6903(5), and 40 C.F.R. Part 261.

31. Respondent's disposal of hazardous waste without a hazardous waste permit is a violation of Section 3005 of RCRA, 42 U.S.C. § 6925.

Count 2
(Failure to make hazardous waste determination)

32. 40 C.F.R. § 262.11 requires a person who generates any solid waste to determine if that waste is a hazardous waste using prescribed methods.

33. 40 C.F.R. § 262.11(c) states that the generator must determine whether the waste is hazardous by either testing the waste according to the methods set forth in subpart C of 40 CFR Part 261 or according to an equivalent method approved by the Administrator under 40 C.F.R. 260.21 or applying knowledge of the hazard characteristic of the waste in light of the materials or the processes used for purposes of compliance with 40 C.F.R. Part 268.

34. Respondent generates wastewater containing varying amounts of chromium during the processing of a cobalt/manganese feed material.

35. Immediately prior to the August 2002 chromium exceedance, Respondent

modified the manner of processing its cobalt/manganese feed material by water-washing the feed material without any further leaching or processing. Prior to the August 2002 chromium exceedance, Respondent processed the cobalt/manganese feed material using an acid leach method.

36. Respondent relied on acid-leach process knowledge rather than performing a bench test on the modified water-wash process or testing the waste material according to the methods set forth in subpart C of 40 C.F.R. Part 261 prior to discharging the water-washed feed material it into Pond 2.

37. The chemistry of the particular feed material and the process change from leaching to washing resulted in the discharge of hazardous waste to Ponds 2 and 4 for four days during the period August 10 through 15, 2002.

38. Respondent failed to apply knowledge of the hazard characteristic of the waste in light of the processes used as required by 40 C.F.R. § 262.11(c).

39. Respondent's failure to make a hazardous waste determination constitutes a violation of 40 C.F.R. § 262.11.

**Count 3
(LDR violation)**

40. Pursuant to 40 C.F.R. § 268.7(a)(1), hazardous-waste generators are responsible for determining whether their waste must be treated before it can be land disposed by determining if the hazardous waste meets the treatment standards in 40 C.F.R. §§ 268.40, 268.45, or 268.49.

41. 40 C.F.R. § 268.40 prohibits the land disposal of hazardous waste that does not meet the treatment standards.

42. Respondent discharged wastewater containing chromium levels of 56 ppm into Ponds 2 and 4 for four days during the period August 10 through 15, 2002.

43. The high chromium wastewater is a D007 hazardous waste.

44. In order to land dispose wastewaters containing D007 hazardous waste, it must comply with a daily concentration level of 2.77 mg/l and meet 40 C.F.R. § 268.48 standards. 40 C.F.R. § 268.40.

45. Respondent failed to determine whether the chromium (D007 hazardous waste) had to be treated before the waste could be land disposed and the waste was not treated prior to disposal in Ponds 2 and 4.

46. Respondent's failure to meet the land disposal requirements is a violation of 40 C.F.R. §§ 268.7(a)(1) and (2), and 268.40(a).

**Count 4
(Failure to conduct weekly inspections)**

47. 40 C.F.R. § 265.174 requires that an owner or operator inspect areas where hazardous waste containers are stored at least weekly, looking for leaks and for deterioration caused by corrosion and other factors.

48. The hazardous waste container inspection log reviewed during the Inspection indicated that Respondent did not inspect the container area for 14 supersacs of moly cake (D007) on a weekly basis for the period July 20 through August 1, 2002.

49. Respondent's failure to conduct weekly inspections of the hazardous waste container area constitutes a violation of 40 C.F.R. § 265.174.

Count 5
(Failure to make arrangements with
local hospitals regarding worst case discharge)

50. 40 C.F.R. § 262.34(d)(4) and (e) requires that generators comply with the requirements for owners or operators in subpart C, Preparedness and Prevention, set forth in 40 C.F.R. Part 265.

51. 40 C.F.R. § 265.37(a)(4) requires that owners or operators make arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

52. Respondent's original contingency plan did not include arrangements made with the local hospital to familiarize it with the types of injuries or illnesses which could result from fires, explosions or releases at the facility.

53. Respondent's revised contingency plan, dated June 20, 2002, fails to describe arrangements with the local hospital to familiarize it with the types of injuries or illnesses which could result from fires, explosions or releases at the facility.

54. EPA notified Respondent of this deficiency during the Inspection.

55. Respondent advised EPA that it remedied the deficiency on October 4, 2002, by notifying the local hospital of its revised contingency plan and the types of treatment anticipated in the event of an injury or illness resulting from fires, explosions, or releases at the facility.

56. The failure of Respondent's contingency plan to describe arrangements with the local hospital to familiarize it with the types of injuries or illnesses which could result from fires, explosions or releases at the facility for the period June 20 through October 4, 2002, constitutes a violation of 40 C.F.R. § 265.37(a)(4).

Count 6
(Failure to locally distribute contingency plan)

57. 40 C.F.R. § 265.53(b) requires that a copy of the contingency plan and all revisions be distributed to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

58. Respondent revised its contingency plan on June 20, 2002.

59. Respondent had not distributed copies of the revised contingency plan to local emergency responders as of the date of the Inspection.

60. EPA notified Respondent of this deficiency during the Inspection.

61. Respondent advised EPA that it remedied the deficiency on October 4, 2002, by distributing copies of the revised contingency plan to local fire and sheriff departments as well as tribal and state emergency responders.

62. Respondent's failure to provide local emergency responders with copies of the revised contingency plan for the period June 20 through October 4, 2002, constitutes a violation of 40 C.F.R. § 265.53(b).

TERMS OF SETTLEMENT

Civil Penalty

63. Respondent consents to the issuance of this Consent Agreement and for the purposes of settlement to pay a civil penalty in the amount of ONE HUNDRED ELEVEN THOUSAND DOLLARS (\$111,000.00) by remitting a cashiers or certified check, payable to "Treasurer, United States of America," within thirty (30) days of receipt of a final order to:

EPA - Region VIII
(Regional Hearing Clerk)
P.O. Box 360859M
Pittsburgh, PA 15251

The check shall reference Respondent's name and facility address, the EPA Docket Number of this action, and Respondent's Taxpayer Identification Number (T.I.N.).

64. Respondent shall simultaneously provide a copy of the check to:

Tina Artemis, Regional Hearing Clerk
U.S. EPA, Region VIII (8RC)
999 18th Street, Suite 300
Denver, Co 80202-2466

and to:

Amy Swanson, Enforcement Attorney
U.S. EPA, Region VIII (8ENF-L)
999 18th Street, Suite 300
Denver, Co 80202-2466

Compliance Order

Based upon the allegations above, and pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, the parties agree as follows:

65. Respondent shall sample and characterize the waste in Ponds 2 and 4 in accordance with EPA's letter requesting a proposed written work plan for OMG's Pond

Maintenance Project, dated October 21, 2002, and OMG's Pond Sampling, Analysis and Closure Plan ("Plan"), hereby attached and incorporated herein as Attachment A. All work shall be performed in accordance with the terms and timeframes described in Sections 4.1.1 and 6.0 of the Plan.

66. All plans and related documents requested in this section shall be submitted under this Order shall be mailed to:

Eric Johnson
U.S. Environmental Protection Agency
Region 8, 8ENF-T
999 18th Street, Suite 300
Denver, CO 80202-2466

GENERAL PROVISIONS

67. This Consent Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law.

68. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final civil settlement of the specific violations alleged herein.

69. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to execute this Consent Agreement therein binding the parties to its terms and conditions.

70. Each party shall bear its own costs and attorneys fees in connection with all issues associated with this Consent Agreement.

SO AGREED AND CONSENTED TO BY:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION VIII,
Complainant.

Date: 4/22/03

By: David J. Janik
Michael T. Risner, Director
David Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

Date: 4/22/03

By: SIGNED
Sharon L. Kercher, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

OMG AMERICAS, INC.-APEX OPERATIONS,
Respondent

Date: 4/15/03

By: SIGNED
Michael McNally
Vice President, EHS
OMG Group, Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **OMG AMERICA'S , INC. - APEX OPERATION, DOCKET NO.: RCRA-08-2003-0002** was filed with the Regional Hearing Clerk on April 23, 2003.

Further, the undersigned certifies that a true and correct copy of the document was delivered to Amy Swanson, Enforcement Attorney, U.S. EPA - Region 8, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt to:

Michael McNally, Vice President
Environment, Health and Safety
OM Group, Inc.
2301 Scranton Road
Cleveland, OH 44113

and

Christopher D. Thomas, Esq.
Squire, Sanders and Dempsey, L.L.P.
Two Renaissance Square
40 North Central Avenue, Suite 2700
Phoenix, AZ 85004-4498

April 23, 2003

SIGNED

Tina Artemis
Regional Hearing Clerk

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE RHC'S OFFICE ON APRIL 23, 2003.